UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ANNE ARMSTRONG and
ALAN GORDON
Plaintiffs

v. **C.A. NO. 16-403**

PETER KILMARTIN, in his capacity
as Attorney General, et al.
Defendants

State Defendants' Response to Plaintiffs' Objection to Motion to Dismiss

In response to the State Defendants' Motion to Dismiss, the Plaintiffs filed a tome that actually enforces the arguments for dismissal. It is clear that the Plaintiffs have a generalized disagreement with the State of Rhode Island's regulation and criminalization of marijuana. It is also clear that the present action is intended to derail the criminal matters pending against each Plaintiff. For these reasons, the State Defendants respectfully request that their Motion to Dismiss be granted.

The Plaintiffs do not even attempt to argue that this case will have no effect on their criminal matters. Indeed, that is exactly what they seek. They are unhappy with the progress of their prosecutions, and are in disagreement with decisions that have been made. Instead, they take a new track-arguing bias in the Rhode Island state courts such that abstention provided for in Younger v. Harris, 401 U.S. 37 (1971) should not apply.

The instant Motion rests in large part on Younger abstention. Under that familiar test, a federal court must abstain from reaching the merits of a case over which it has jurisdiction so long as there is: (1) an ongoing state judicial proceeding, instituted prior to the federal proceeding (or, at least, instituted prior to any substantial progress in the federal

proceeding); that (2) implicates an important state interest; and (3) provides an adequate opportunity for the plaintiffs to raise the claims advanced in their federal lawsuit. Brooks v. New Hampshire Supreme Court, 80 F.3d 633, 638 (1st Cir. 1996). Plaintiffs' main argument against the application of Younger abstention appears to rest on the third prong.

Federal courts have been understandably reluctant to accept the argument that an entire state judicial system is biased. Plaintiffs believe that since their arguments have not persuaded certain Superior and Supreme Court judges and one magistrate, the entire system must be biased against them. This is nonsense, and they offer nothing in support of their very serious allegations.

In Brooks, Judge Selya rejected a similar argument, beginning with the premise that "state courts are fully capable of safeguarding federal constitutional rights." Id. at 639 (citations omitted). In acknowledging that "judicial bias is a recognized basis for derailing *Younger* abstention," the First Circuit cautioned that "the claim requires more than the frenzied brandishing of a cardboard sword." Id. The tipping point of Brooks, and certainly in this case, was the Plaintiffs' reliance on mere allegation, without more. As in Brooks, these Plaintiffs have offered nothing to even give this Court pause—no hint of a conflict of interest or a pecuniary stake in the outcome of the litigation. "The presumption of judicial impartiality cannot be trumped by free-floating invective, unanchored to specific facts." Id. at 640 (citations omitted).

The State Defendants therefore respectfully request that their Motion to Dismiss be granted.

DEFENDANTS
By Their Attorneys,

REBECCA TEDFORD PARTINGTON
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January 2017 I have e-filed the within document via the ECF filing system and that it is available for viewing and downloading. On this date I have also mailed a copy of the within by first class mail, postage prepaid to:

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/s/ Rebecca Tedford Partington
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